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Committee Secretariat
Transport and Infrastructure Committee
Parliament Buildings
Wellington

Dear Committee Members,

ICNZ submission on the Building Amendment Bill

Thank you for the opportunity to submit on the *Building Amendment Bill* ("Bill"), which was introduced to Parliament in August. ICNZ represents general insurers that insure about 95 percent of the New Zealand general insurance market, including over half a trillion dollars' worth of New Zealand property and liabilities.

We wish to appear before the Committee to speak to our submission.

Please contact Andrew Saunders (andrew@icnz.org.nz or 04 914 2224) if you have any questions on our submission or require further information.

This submission is in two parts:

- Part 1 – Overarching comments
- Part 2 – Comments and recommendations on clauses 12 and 19 of the Bill

Summary

ICNZ supports the introduction of a framework for managing buildings after a disaster. We recognise there is a need for strong powers in some circumstances, and direct government action, but have concerns with elements of the design and the extent to which the proposed framework overrides normal property rights and could interfere with contractual insurance obligations. It is important that the proposed regime remains within scope and is fair and transparent, otherwise, it risks overly impacting building owners and/or the provision of insurance.

Specific concerns with the proposed framework include that the "property rights framework" is limited and has no specific regard for insurers and their legitimate interests, the threshold for undertaking works under new sections 133BU and 133BV is novel and its application is uncertain, the lack of provisions requiring the notification of insurers, a limited ability for parties with legitimate interests in the fate of buildings to be able to input into decisions on them, and the absence of an interface with health and safety law or specific record keeping requirements.

1. Overarching comments

The development of the proposals in the Bill

We note the proposals in the Bill address recommendations from the Canterbury Earthquakes Royal Commission (2011-12) and that ICNZ submitted on the 2015 consultation[1] on these issues undertaken by the Ministry of Business Innovation and Employment (MBIE). We supported the introduction of emergency powers but raised concerns with aspects of the proposals related to decision making, liability, appeals and the potential for adverse impacts on building owners and insurers. We also noted lessons from the Canterbury earthquakes including the impacts of buildings being demolished without insurers' knowledge, issues of delays in insurers being able to inspect buildings, the refusal of consents for repair work and the resulting negative impacts of these on Christchurch's recovery.

ICNZ recommended in 2015 that a protocol be developed ensuring insurers be given early access to damaged buildings for the purpose of conducting assessments and have access to decision makers about the fate of buildings.

Critical role of insurance in relation to buildings in New Zealand

Before turning to the provisions in the Bill we will outline the role of insurance and insurers in relation to buildings, including following a natural disaster such as an earthquake. Transferring the financial risks of damage/destruction for the hundreds of billions of dollars' worth of buildings (and their contents) through insurance is critical to provide confidence for those investing in buildings and those who lend money to those investors (i.e. banks).

Buildings in New Zealand are generally insured for losses that might result from adverse events such as fire or natural disasters (including earthquakes). The proportion of property that is insured for earthquake damage in New Zealand, amongst both commercial and residential buildings, is significantly higher than in comparable earthquake prone jurisdictions such as Japan and California. This means that where there are consolidated losses, such as following a major earthquake, a significant proportion of the financial losses are transferred to private insurers and their reinsurers. This provides money to repair and rebuild and reduces the call on central government resources. Without the reinsurers' financial capacity, Canterbury's recovery from the 2010/2011 earthquakes would have been much more challenging.

Maintaining a vibrant market for building insurance in New Zealand relies on there being a workable and reasonable regulatory regime that makes it attractive for insurers and reinsurers to expose their capital to underwriting those risks. Given New Zealand's risk profile[2] and size it is particularly important that our legislative environment for dealing with national emergencies is transparent and fair as this provides the necessary confidence for reinsurers to invest financial capacity in our insurance market. Regulatory changes that unnecessarily increase insurers/reinsurers potential exposures and/or introduce uncertainty should therefore be avoided.

It is important to note that since MBIE's 2015 consultation there have been movements in the insurance market for buildings in New Zealand, particularly in areas with higher levels of seismic related risk, and the number of major earthquake events in recent years makes the situation more

[1] Building Act Emergency Management Proposals, Consultation Document, MBIE, May 2015.

[2] New Zealand was recently ranked as the second riskiest country in the world on the basis of annual expected losses as a percentage of GDP in a major international study released by Lloyd's of London, see https://www.lloyds.com/news-and-risk-insight/risk-reports/library/understanding-risk/a-world-at-risk.

delicate.[3] Most notably it has become more challenging to get insurance for multi-story buildings in cities such as Wellington and some insurers have decided to reduce their capacity in, or exit, these markets.

Relevant features of insurance

Before turning to the specific issues salient to the Bill it is important to outline some of the relevant features of insurance policies:

- A building will usually be insured for a specific sum, which will reflect either the expected costs of replacement/reinstatement or its indemnity value[4]. The most the insurer will pay under the policy is the sum insured and policies have a deductible/excess, commonly 5% of the sum insured for commercial property.
- In the event of suffering damage insurance will generally pay for repair or replacement as relevant as well as other costs (e.g. demolition, professional fees) up to a maximum limit and often with sub-limits for various aspects. Inflated costs for one aspect, say for demolition, can therefore in the event of a total loss reduce what the building owner ultimately receives, representing a relative loss for them and potentially impacting their ability to rebuild etc.
- Policies have exclusions for various matters (e.g. consequential losses, wear and tear, terrorism etc.) and there are standard exclusions for actions by governments/local governments, such as the following that could be relevant to the exercise of the powers provided in the Bill:

  > "This Policy does not insure loss or damage to insured property, or any interruption of or interference with the insured business arising directly or indirectly from, or in connection with;
  >
  > (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, conspiracy, military or usurped power, confiscation, nationalisation, commandeering, requisition or destruction or damage by or under the order of any government de jure or de facto or by any public or local authority;
  >
  > or
  >
  > (b) confiscation, requisition, or destruction of or damage to property by order of government or local authority unless the order is given for the purpose of controlling fire or another peril for which insurance is provided by this Policy".

- In working through and settling a claim the insurer and insured will investigate, consider and discuss the damage suffered to a building, options for repairing damage and reinstating the building and if this is not possible (i.e. the building is a total loss because it is economically unrepairable) then there is potential for the full sum insured to be paid out. This process happens over a period of time, with the input of various experts (e.g. engineers) and with the agreement of the parties. If agreement is not possible then there is ultimately potential for court action by the insured in relation to the insurance contract.
- Following damage and during a claim process a building owner must obtain their insurers agreement before incurring expenses in connection with any claim or doing anything that may prejudice the insurer's rights of recovery.

[3] Over $1.6 billion of insurance losses were incurred in Wellington after the 2016 Kaikōura earthquake even though this event was centred over 200km from the city.

[4] Indemnity value is the current value of building, taking into account its age or condition at the time of loss or damage.

- Insurance does not generally provide for "betterment", that is actions or expenses that add to an asset's value or improve its performance. As such, if works are ordered that would involve improving a building then this would generally not be covered by insurance. This has historically been an issue that has arisen in relation to heritage buildings in particular.

We also note that beyond insurance for buildings other types of insurance are also potentially relevant to the exercise of the powers in the Bill. Given this, insurers have a wider perspective and interest than simply the costs associated with damage to buildings. Examples of other potentially relevant types of insurance include:

- business interruption insurance for occupiers and building owners (e.g. for loss of rents);
- property insurance for contents/stock held by occupiers of damaged buildings; and
- statutory liability insurance covering the insured for injury and damage and breaches of legislation (specifically *Health and Safety at Work Act 2015* and the *Building Act 2004*).

Relevant learnings from and since the Canterbury earthquakes

ICNZ wants to be clear about the context of this submission. It fully supports the extraordinary rescue efforts in the aftermath of the 22 February 2011 earthquake. This submission addresses decisions that were made outside of efforts to save lives or retrieve the casualties of that event. Further, we acknowledge that when decisions are made by people using emergency powers in circumstances they have never encountered before that decision makers may be unaware of the unintended consequences of their actions.

ICNZ observed during the Canterbury earthquake recovery many cases where insurers' normal rights and interests to determine the extent of material damage to buildings were not recognised due to actions by those exercising emergency powers.[5] This resulted in needless economic loss, uncertainties and delays. There were also opportunities to exercise powers available to authorities to remove roadblocks to recovery that were not exercised, which also contributed to uncertainties and delays.

Buildings demolished without insurers' knowledge

Commercial buildings that had suffered damage from the 22nd February 2011 earthquake were demolished under order of the recovery authorities. In some cases, it was alleged that building owners may have given permission to authorities to allow a building to be demolished. In other cases, it was understood that the building owner was unaware of the decision. This all occurred soon after the 22 February 2011 earthquake event and prior to the establishment of the Canterbury Earthquake Recovery Authority (CERA) in April 2011.

A number of insurers found that they had been prejudiced by these decisions as insured buildings were demolished without the opportunity to assess the damage. Some buildings that were demolished could have been repaired, but all evidence crucial to a claim settlement was destroyed. This situation also makes it very difficult for insurers to justify to their reinsurers to pay the claim as there was insufficient claims evidence. The costs of demolition were also in some cases very high.

[5] Emergency powers related to buildings were provided under the *Canterbury Earthquake (Building Act) Order 2010* made under the *Canterbury Earthquake Response and Recovery Act 2010*, and under sections 38-41 of the *Canterbury Earthquake Recovery Act 2011*.

ICNZ was informed by its members that there were not just one or two isolated cases of a building being demolished in Christchurch without the insurer's knowledge. There were many and a number of these claims were in dispute for many years after the event.

Insurers faced access delays to inspect damaged buildings

It took significant time for insurers and their engineers to be allowed access to damaged buildings in the Christchurch CBD cordon following the February 2011 earthquake. While we are well aware of the safety issues that existed at the time, authorities made decisions about demolition without insurers being able to verify and/or agree with those decisions as they were not granted access to those buildings.

ICNZ therefore recommended in response to the 2015 MBIE consultation, and still supports, that any new legislative provisions on emergency response for buildings should allow insurers access to damaged buildings much earlier on than was experienced in Canterbury and require that insurers and their engineering experts be able to have direct input to decisions about the fate of buildings. This would reduce the risks of claims disputes and unrecoverable financial losses for insureds, removing critical grounds for dispute which inevitably delay settlement and therefore facilitate speedier recovery. Joint investigations by insurers and authorities have the potential to ensure the most relevant information is gathered and considered.

We are also mindful that new technologies allowing the remote inspection of buildings (e.g. using drones, 3D laser modelling etc.) have developed significantly in recent years and so the potential to inspect damaged buildings is greater than was the case in 2010/11, notwithstanding the stricter health and safety laws now in place. Buildings are also being fitted with embedded measuring devices that allow the impact of a seismic event on a building to be assessed.

It is critical this information held by owners, insurers or their engineers is used to inform decisions on the fate of buildings, even those that need to be made swiftly. Experience has illustrated the challenges in accessing buildings following an earthquake and the risks of relying on superficial assessments. There are examples of both buildings that appeared to be in good condition but were in fact severely compromised as well as those that looked severely damaged but were repairable.

We note that because of the comparatively limited and spread out nature of the damaged buildings following the November 2016 Kaikōura earthquake, these were generally managed in an orderly way that enabled the information on damage to be gathered and the views of owners, insurers and others to be considered prior to decisions being made as to demolition or repair.

Implications of demolition of buildings under emergency powers

Demolishing buildings pursuant to emergency powers in the absence of insurer consent has a range of potential effects. It creates the potential for additional economic losses, particularly if a building was damaged but economically repairable. Depending on the specific circumstances applying in a particular case these losses could be borne by insurers or by insureds (i.e. building owners) if for example exclusions such as that noted above applied (refer to page 3 of this submission).

Building owners are not the only party affected when an insurer cannot pay a claim, or a claim becomes frustrated due to evidence being destroyed. There will be effects on the tenants and mortgage lenders and in some cases on the local community that benefited from the building's amenity value. Consequential effects on property not directly owned by the building owner, such as the tenant's commercial fit out, stock and contents can be significant. In one Canterbury case we are aware of, the combined insured value of the tenants fit-out exceeded the insured value of the building.

It is critical for insurers to assess damage to a building to determine the nature and extent of damage, whether it is covered by the policy, and what the appropriate approach would be (e.g. repair/reinstatement or total loss requiring demolition etc). If insurers are unable to access buildings to undertake assessments, and/or are precluded from the decision-making process on the future of buildings, or both because the building is demolished quickly without notice, the resulting lack of information to base the claims process on will likely complicate and prolong the length of it. With a swift demolition there is the likelihood of little information being collected prior to the decision and then all physical evidence being lost during the demolition.

The prospect of buildings being demolished pursuant to emergency powers without insurer consent increases uncertainties for insurers and reinsurers regarding potential exposures following major events such as large earthquakes. To the extent insurers/reinsurers consider they will bear these costs this uncertainty may in turn be reflected in higher premiums[6] and/or reduced coverage for buildings in higher seismic risk areas, or a total exclusion.

ICNZ supports introducing a regime for managing buildings during and after an emergency, but it needs to be fair and transparent

Notwithstanding the above concerns ICNZ supports the introduction of a regime for managing buildings during and after an emergency such as an earthquake. There will be a need to take action in relation to buildings following a major emergency event and this may include the demolition of some buildings. In these situations there is a need for agility and a degree of flexibility to manage the situation as it develops. While our comments in this submission are focussed on the application of this to larger buildings (e.g. multi-story, multi-unit etc), we recognise that it can be applied to houses and that there are specific provisions related to the application of the powers to "simple-unit residential buildings".

It is beneficial to have a framework providing the necessary powers set in advance through legislation to allow both for smaller disasters to be managed and to avoid the need for such a regime to be rushed through under special legislation following a major disaster, with the uncertainty that prospect also creates. We remain concerned however that without amendment there is a risk the proposed framework provided for in the Bill leads to decisions that add to economic losses, complicate the insurance response and delay recovery.

We recognise there is a case for overriding property rights in some circumstances, but this should be limited to where this is necessary. Demolition should be a last resort and we therefore support the commentary on page 71 of MBIE's guidance for Managing Buildings in an Emergency[7]:

> "Demolition is a last resort. Wherever practical, this decision should be held over until the building owner can be involved. It is important to consider all the external factors before a decision is made to demolish, and the reasons for making this decision must be documented."

[6] As a specific example, for excess layer placements there would be concern that an increased likelihood of buildings being demolished would mean they would be more vulnerable to paying claims for buildings, which were repairable but have been demolished and so become a total loss. Currently mid and top layer placements are priced at much lower rates than primary layers because they are less likely to be called on, but increased risks of pre-emptive demolition and total losses could impact that. It is common for property insurance for more valuable properties, such as large commercial buildings, to be insured by a consortium of insurers operating on a shared basis or in layers under a lead-insurer.

[7] From "Guidance, Managing buildings in an emergency, Guidance for decision makers and territorial authorities", MBIE, 2018.

It is imperative that such a regime appropriately respects and balances the interests of building owners and occupiers, insurers, financiers, neighbouring owners/occupiers, and the wider community across the period immediately following a disaster and beyond. The scope of powers should be appropriately limited to the emergency situation and not used as a means for avoiding legitimate processes between building owners and their insurers, notwithstanding that these might sometimes be prolonged. We recognise there are inherent trade-offs between speed of decision making and respecting legitimate interests, however, successful long-term solutions require the proper involvement of all relevant parties and respect for contractual obligations.

Whilst the regime in the Bill is flexible enough to allow appropriate decisions to be made, our concern is that the same flexibility could also allow poor decisions to be made. The Bill empowers action but doesn't give much detail on the how to make the crucial decisions and what should underpin these, although some of this is provided in the guidance mentioned above.

The regime needs to provide for well informed decisions and be sufficiently robust and transparent to manage conflicts of interest. We note potential conflicts can arise for decision makers as they may have other objectives (e.g. planning objectives) that go beyond their specific responsibilities under the proposed framework or may have a direct financial stake in the issue (e.g. the local authority owns the relevant building).

The proposed framework applies for up to six years and covers from the immediate emergency phase through to medium-term recovery. The approach where urgency is high needs to be fundamentally different to that applying when there is time for information to be gathered and the rights of key parties to be properly considered. We recognise the three-tiered concept in new sections 133BU-BW and the principles in 133BN, but amendments are required to ensure that this is the case.

Beyond the establishment of the legal framework provided in the Bill it is critical the capabilities and systems are put in place so that when it is called on, the organisations and people who are empowered to take actions under it have the skills and expertise required to do so effectively. This will require ongoing funding to support training and the undertaking of exercises by central and local government agencies.

Key concerns with the specific proposals in the Bill

While we support the introduction of a framework for managing buildings after an emergency we have concerns with the following aspects of the regime provided in the Bill:

- The "property rights framework" that has been introduced is positive step as compared with the 2015 proposals but is limited and has no specific regard for insurers and their legitimate interests.
- The threshold for undertaking works under new sections 133BU and 133BV is novel and application is uncertain. It is identified in the Regulatory Impact Statement (RIS) for the Bill that it is a deliberately lower threshold than that for a "dangerous building" under section 121 of the *Building Act 2004*. We agree the current drafting of section 121 and the explicit exclusion of earthquakes in particular is problematic in this context, however, it is unclear why the threshold used in the Bill is completely different from that in the current *Building Act 2004*, rather than a suitably modified version of it.
- The lack of provisions requiring the notification of insurers, given the extent of interest insurers have as underwriters of buildings. It is important that insurers have an opportunity to provide input and information, particularly before any irreversible decisions are made.

- There is a limited ability for parties with legitimate interests in the fate of buildings, such as insurers, to be able to input into decisions on them. This is particularly critical given appeal rights are unavailable or limited, decision makers are immune from liability by virtue of section 390 of the *Building Act 2004*,[8] and there is no explicit process for managing conflicts of interest.
- There is no explicit interface with the *Health and Safety at Work Act 2015* regime even though activities under the framework in the Bill could pose health and safety risks. For example what would happen if a building owner is unwilling or unable to carry out work ordered under new sections 133BV or 133BW due to the restrictions provided under health and safety law, or if a *responsible person* enters a building without notice to the owner under new section 133BP(3)(b) and suffers harm.
- There is an apparent absence of any specific record keeping requirements in relation to decisions/actions taken by *responsible persons* under proposed Part 6B of the *Building Act 2004*, the basis and information underpinning these decisions/actions and the section that was acted under.

Proposed changes to the Bill to resolve identified issues

In Part 2 of this submission below we make specific comments and recommendations in relation to the clauses of the Bill.

Further to these we also consider the following matters need to be provided for in the legislation:

- Include provisions for managing conflicts of interest for *responsible person*s, to address situations where for instance the *responsible person* is a territorial authority exercising powers in relation to buildings it owns. Conflicts of interest by a council exercising powers should not be allowed and accordingly decisions should be deferred to the Minister in the case of a council owned buildings.
- Responsibilities under *Health and Safety at Work Act 2015* need to be considered and appropriately provided for in the Bill.

We also consider outside of the legislation a protocol should be developed by central government in consultation with local government and insurers that allow insurers and their engineers access to damaged buildings following a disaster to undertake investigations; and provides for how key parties (including insurers) have access to decision makers in regard to the fate of buildings under proposed subpart 6B of Part of the *Building Act 2014* to support the basic framework provided in the Bill.

Building Investigation Powers (clause 19 of the Bill)

ICNZ supports powers being introduced in clause 19 of the Bill in relation to investigating building failures. It is important building failures are understood and the lessons shared to reduce the risks of similar building failures.

[8] Clause 25 of the Bill amends section 390, which provides that civil proceedings may not be brought against specified decision makers under the principal Act. New subsection (1)(ca) and (cb) include among these decision makers a person engaged by the chief executive under new section 207F in relation to investigation of a building failure and a *responsible persons* under new subpart 6B of Part 2.

2. Comments and recommendations on clauses 12 and 19 of the Bill

In this part of the submission we provide specific comments and recommendations on the new sections of the *Building Act 2004* provided in clauses 12 and 19 the Bill.

New section of the Act	Comments	Recommendations
Section 133BE Public notice of designation	• Publishing a notice of a designation on a website is a good step but there should also be a general duty to take steps to publicise the notice to potentially affected parties (e.g. building and infrastructure owners, insurers, financiers etc.). For larger events (e.g. major earthquake) there is likely to be rapid widespread knowledge of the event and an assumption a designation will be put in place, but for smaller events there is a risk that simply putting the designation on a website does not lead to potentially affected parties such as insurers or re-insurers being informed.	**Include a general duty in new section 133BE to make efforts to publicise the notice of a designation to potentially affected parties.**
Section 133BG Periodic review of designation	• We support the regular reviews of designations provided for in new section 133BG.	**Support.**
Section 133BN Principles for exercise of powers	• The criteria in this new section should include financial costs and economic losses as a specific factor. This would not override the paramount consideration (life and safety) but would build on the general idea of "proportionality". Whilst "proportionality" is included, the absence of any specific reference to costs risks them not being appropriately weighed up with those other matters that are specifically listed (e.g. restrictions on occupation of property). • Sub-section 133BN(d) should explicitly include reference to up-to-date information about the building, including from parties with knowledge of a building such as owners and insurers. Whilst this is arguably covered by the first part of 133BN(d)(i), the rest of that sub-section has a very different flavour (towards subsequent events) and we also note (i) and (ii) appear duplicative with regard to coverage of future events/emergencies. • There should be a general principle that, where practicable, *responsible person*s notify and engage with affected parties (including insurers). This is fundamental to respecting property rights and pre-existing contractual obligations. • New section 133BN provides that the "paramount consideration in the exercise of those powers is protection of human life and safety". To ensure this is not applied in an overly cautious way that potentially reduces the effectiveness of the proposed framework overall it would be valuable to provide guidance to *responsible persons* on how this is applied to different types of situations. Amongst other issues it would be useful to discuss how this principle relates to proportionality (133BN) and how it is applied to situations involving passers-by and to situations involving those who voluntarily assume a level of risk to undertake a specific activity (e.g. building investigations).	**Include in new section 133BN:** • **a requirement to give specific regard to financial costs resulting from actions when exercising powers;** • **an explicit requirement in new section 133BN(d) to seek information from parties with knowledge of the building; and** • **a general principle that where practicable *responsible persons* notify and engage with affected parties.**

New section of the Act	Comments	Recommendations
Section 133BP Post-event assessments	• We question whether there is a risk that in undertaking post event assessments and utilising the power to enter buildings under new section 133BP(3)(b), a *responsible person* could expose building owners to duties and potential liability under health and safety law, without their knowledge?	**Note our comments and consider how to provide for the potential interactions between health and safety law and the proposed regime for managing buildings after an emergency event.**
Section 133BR Measures to keep people at safe distance and protect building	• As noted in Part 1 of this submission we consider it important that insurers and their engineers have reasonable access to damaged buildings following a disaster to undertake investigations. • Given the above, we support the inclusion of new section 133BR(3)(b) that allows limited access for appropriate purpose. In the absence of this there is no seemingly no explicit provision in the Bill that relates to allowing access to buildings. Further guidance on how this provision would be applied would be appropriate (e.g. development of the access protocol we have recommended previously) as it is important it can be applied pragmatically and not overly cautiously. • Drafting comment. We note the scope of new section 133BR appears to be defined in subsection (1) to keeping people at a safe distance from a building and protecting a building from being damaged. New sub-section 133BR(2)(d) provides for measures that allow limited access to buildings. As outlined above we support this ability to allow access being included but there seems a possible question as to whether this is within the scope of 133BR(1)(a). Consideration should be given to redrafting to 133BR(1)(a) to make clear that the measures can include both measures to keep people at a safe distance from a building (e.g. 133BR(2)(a) and (b)) and also measures to ensure any access is undertaken in a safe manner (e.g. 133BR(2)(d)).	**Note our comments.** **Reconsider drafting of 133BR(1) and (2) to address drafting issue identified.**

Section 133BU
Urgent works to remove or reduce risks
	• The rationale for the powers in this section are an urgent need to take action on a building and given the override of other parties' interests (e.g. owners/occupiers/insurers) it should only be used in this context and not used to avoid the consultation requirements applying under new section 133BV. Aside from the narrower scope of risks the key difference between new sections 133BU and BV is whether the works "must be carried out without delay". This is critical and novel threshold and providing supporting guidance on when this is met and so whether 133BU applies rather than 133BV will be important given the potentially draconian action it enables.
	• There is no risk tolerance standard provided for the extent to which risks posed by the building should be removed or reduced by works under new section 133BU. In the absence of a clearer risk tolerance framework and that fact it differs from existing criteria in the *Building Act 2004* (e.g. section 121) there is little guidance on when to intervene, and to what extent, beyond the proportionality principle in new
		• **Include in new section 133BU, or in supporting guidance:**
		  ○ **a standard for what extent risks should be reduced to in the legislation; and**
		  ○ **in what situations 133BU applies rather than 133BV.**
		• **Include in new section 133BU an obligation on the *responsible persons* to contact relevant parties where reasonably practicable, at least the building owner.**
		• **"risks" in the heading to this section should be replaced with "risks to persons and**

New section of the Act	Comments	Recommendations
	section 133BN. The inclusion of a standard in the legislation would assist *responsible person*s in making decisions and provide greater certainty to other parties. • Whilst this power is explicitly for urgent situations there should be an obligation on the *responsible person* to try and contact relevant parties, at least the building owner. It would be incongruous for this section to be relied on to demolish a building where there was time to contact the building owner and potentially gain relevant information (because the work could not be done immediately), but no effort to do so is even required in the legislation. There are risks in taking action without full information (e.g. presence of asbestos) and so whether there is time to seek information it should be done. • Drafting comment – the use of "risks" in the heading to this section should be revised to "risks to persons and critical infrastructure" or similar to make clearer the scope of this provision in isolation and vis-à-vis new section 133BV.	**critical infrastructure" or similar.**
Section 133BV Works to remove or reduce other risks	• We consider insurers should be consulted under 133BV(3)(a) as they have a strong interest in the future of damaged buildings and contractual responsibilities to the building owner, as strong as or arguably stronger than parties already listed such as mortgage holders. As well as an interest in the fate of the building, insurers and their experts may also have information about a specific building as well as wider expertise on how to manage damaged buildings generally, or of that kind. We recognise that insurers of buildings are not registered in the same way as building owners and mortgage holders but if *responsible person*s publicly notify information on the buildings being considered (e.g. through a continually updated webpage) then insurers will be able to engage themselves in this process. ICNZ may also be able to facilitate these interactions. • Whilst recognising the overarching principles in section 133BN, the weighing up under section 133BV(3)(b)(c) lacks explicit regard to the impact on the value of the building itself as opposed to the costs of the work. For example it would not seem proportionate to spend $1m to demolish a building to reduce $2m in impact for neighbours, if the loss in value of the building was $10m and this could have been reduced significantly by repairing it. This sub-clause should accordingly be amended to make clear that "costs of carrying out the work" include the loss of value to the building (e.g. if it is demolished) or specifically include that as separate factor to be considered. • We support that section 133BV(3)(b) requires alternatives to demolition of the building to be considered, though we are concerned that the default assumption therefore seems to be for demolition. • Drafting comment – the use of "other risks" in the heading to this section should be revised, perhaps to just "risks". The	• **Include in section 133BV, or in supporting guidance, a standard for what extent risks should be reduced to in the legislation.** • **The "insurer of the building" should be added as another subclause to section 133BV(3)(a).** • **133BV(3)(b)(c) should be amended to make clear that "costs of carrying out the work" include the potential loss of value to the building, or specifically include that as a factor to be considered.** • **The use of the phrase "other risks" in the heading to this section should be revised to improve clarity.**

New section of the Act	Comments	Recommendations
	risks are broader than in 133BU but they also include the same risks (to people and critical infrastructure) and so aren't "other" vis-à-vis 133BU.	
Section 133BW Works for long-term use or occupation of building	• The scope of this section, looking to the long-term use, seems to stretch the scope of subpart 6B. It is not entirely apparent what the basis is for overriding owners' rights and potentially other contractual relationships/obligations once a building has been made safe to others or why more than the conventional *Building Act 2004* powers are required (e.g. section 125)? This can also create practical issues, for example it is unclear what happens if property owner and their insurer are considering what to do with a building and the owner is then ordered to undertake works that may not be consistent with their long-term plans for the building. • We note that insurance policies don't generally provide for "betterment". If the building owner is unable to fund the required works, or they are undertaken by a *responsible person* at the owners cost, it is unclear what would happen. • We question why there is no equivalent of section 133BV(3) requiring engagement with affected parties in 133BW given engagement with affected parties seems equally relevant to the context of section 133BW and the situation is not urgent.	• **Note our comments on whether this provision is consistent with the scope of the regime.** • **Include in section 133BW an engagement provision similar to section 133BV(3), which should also include insurers as per our comments on section 133BV.**
Section 133BX Resource consent not required for certain works	• Requirements to get resource consents has delayed repair work in the past. Where it is simply repairs being undertaken following a disaster it should be unnecessary for resource consents to be required.	• **Support.**
Sections 207K and 207L	• Drafting comment - reword to make clearer what "another power of investigation" refers to, is this simply an investigation into a different building or something else?	• **Reconsider drafting of new sections 207K and 207L to address drafting issue identified.**

Conclusion

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Regulatory Affairs Manager on (04) 914 2224 or by emailing andrew@icnz.org.nz.

Yours sincerely,

Tim Grafton
Chief Executive

Andrew Saunders
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